TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 53

THE PEOPLE OF THE STATE OF NEW YORK,
PETITIONER,

vs.

JOSEPH C. O'NEILL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR CERTIORARI FILED APRIL 21, 1958
CERTIORARI GRANTED JUNE 2, 1958

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN COURT OF GENERAL SESSIONS, COUNTY OF NEW YORK

Criminal 1719

In the Matter

of

the Investigation by the Fourth November 1953 Grand Jury entitled "THE PEOPLE OF THE STATE OF NEW YORK

—against—

JOHN DOE."

CERTIFICATE AND RECOMMENDATION —April 20, 1956 (Filed in Circuit Court of Dade County, State of Florida—April 23, 1956)

Upon reading the annexed affidavit of Francis X. Clark, Assistant District Attorney of the County of New York, sworn to on April 19, 1956, and pursuant to section 618-a of the Code of Criminal Procedure of the State of New York (Chapter 387 of the Laws of 1936),

I, Mitchell D. Schweitzer, Judge of the Court of General Sessions of the County of New York, do hereby Certify,

First: The Court of General Sessions of the County of New York is a court of record of the State of New York.

Second: The District Attorney of New York County has been conducting before the Fourth November 1953 Grand Jury of the County of New York an investigation, bearing the above title, of the disposition of the general funds of certain labor unions and of the activities of officials of said labor unions in the disposition of said funds.

[fol. 2] The said Grand Jury seeks to determine whether certain labor officials and representatives of the aforesaid labor unions have conspired to steal and have stolen property belonging to said unions, in violation of sections 580 and 1290 of the Penal Law of the State of New York.

The said Grand Jury in the conduct of the aforementioned

investigation has heard evidence concerning the disposition of certain general funds of the Distillery, Rectifying, Wine and Allied Workers' International Union of America (A. F. of L.). This evidence covers a seven-year period ending November 15, 1954.

Third: Joseph C. O'Neill is a material and necessary witness in the said Grand Jury investigation.

Joseph C. O'Neill is general president of the Distillery, Rectifying, Wine and Allied Workers' International Union of America (A. F. of L.), chairman of the Executive Board, and chairman of the Social Security Department, i.e., the welfare fund of said union. His testimony is sought by the said Grand Jury on the circumstances relating to the aforementioned disposition of the general funds of the Distillery, Rectifying, Wine and Allied Workers' international (sic) Union of America (A. F. of L.).

The District Attorney's office has made efforts, all without success, to secure the attendance of Joseph C. O'Neill as a witness before the said Grand Jury. Joseph C. O'Neill has consistently refused to appear to testify. His home and office are in Chicago, Illinois. Illinois has no reciprocal witness statute. Therefore, the District Attorney's office has been powerless to compel Joseph C. O'Neill's attendance [fol. 3] by court process.

Information available to the District Attorney of the County of New York establishes the following:

The biennial convention of the Distillery, Rectifying, Wine and Allied Workers' International Union of America (A. F. of L.) is scheduled to be held in Miami, Florida, on April 23, 1956. Arrangements have been made by the union to hold the convention at the Monte Carlo Hotel, in Miami.

Joseph C. O'Neill, as general president of the union, is required by the constitution of the union to conduct the proceedings of the convention.

Arrangements have been made for Joseph C. O'Neill's attendance and presence at the Monte Carlo Hotel, Miami, Florida, on April 23, 1956.

Fourth: The presence of the said Joseph C. O'Neill as a witness before the said Grand Jury will be required for

a period of fifteen days from the date of his arrival in New York County. The said Grand Jury convenes at the Criminal Courts Building, 155 Leonard Street, in the County, City and State of New York.

Fifth: The attendance of the said Joseph C. O'Neill before the said Grand Jury cannot be ensured voluntarily.

Sixth: It will not cause undue hardship to the said Joseph C. O'Neill to attend and testify before the said Grand Jury.

[fol. 4] Seventh: The laws of the State of New York will give to the said Joseph C. O'Neill, while in the State of New York in obedience to an order directing him to attend and testify before the said Grand Jury in New York, protection from arrest and the service of process, civil or criminal, in connection with matters which arose before his entrance into New York under such order.

And I Do Hereby Recommend that the said Joseph C. O'Neill be taken into immediate custody and delivered to an officer of the State of New York to assure his attendance in New York, and that the Court in Florida to which this Certificate and Recommendation will be presented, in lieu of notification of any hearing thereon, direct that such witness be forthwith brought before the said Court for said hearing.

/s/ Mitchell D. Schweitzer, Judge of the Court of General Sessions.

Done and sealed in the Court of General Sessions of the State of New York, County of New York, this 20th day of April, 1956.

[Seal omitted]

[fol. 5]

IN COURT OF GENERAL SESSIONS, COUNTY OF NEW YORK

In the Matter

of

the Investigation by the Fourth November 1953 Grand Jury entitled "THE PEOPLE OF THE STATE OF NEW YORK

—against—

JOHN DOE."

CERTIFICATE RE "COURT OF RECORD" AND TO CLERK'S AUTHORITY—April 20, 1956

I, Mitchell D. Schweitzer, one of the Judges of the Court of General Sessions of the County of New York, do hereby Certify That

First: The said Court is a court of record of the State of New York, having a clerk and seal;

Second: F. Howard Barrett, who has signed the annexed attestation, is the duly constituted and qualified clerk of said Court; said signature is his genuine handwriting; and all his official acts, as said clerk, are entitled to full faith and credit.

And I Further Certify that said attestation is in due form of law.

Witness my hand this 20th day of April, 1956.

/s/ Mitchell D. Schweitzer, Judge of the Court of General Sessions.

[Seal omitted]

[fol. 6]

IN COURT OF GENERAL SESSIONS, COUNTY OF NEW YORK

In the Matter

of

the Investigation by the Fourth November 1953 Grand Jury entitled "THE PEOPLE OF THE STATE OF NEW YORK

—against—

JOHN DOE."

CLERK'S CERTIFICATE—April 20, 1956

State of New York,
County of New York, *ss.*:

I, F. Howard Barrett, Clerk of the Court of General Sessions of the County of New York, do hereby Certify that Honorable Mitchell D. Schweitzer, whose name is subscribed to the preceding certificate, is one of the Judges of the Court of General Sessions of the County of New York, duly commissioned and qualified, and that the signature of said Judge to said certificate is genuine.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 20 day of April, 1956.

/s/ F. Howard Barrett, Clerk of the Court of General Sessions.

[Seal omitted]

[fol. 7]

IN COURT OF GENERAL SESSIONS, COUNTY OF NEW YORK

In the Matter

of

the Investigation by the Fourth November 1953 Grand Jury entitled "THE PEOPLE OF THE STATE OF NEW YORK

—against—

JOHN DOE."

AFFIDAVIT OF FRANCIS X. CLARK—April 19, 1956

State of New York,
County of New York, *ss.*:

Francis X. Clark, being duly sworn, deposes and says:

I am an Assistant District Attorney in and for the County of New York, assigned to the Rackets Bureau of the District Attorney's office.

I have been working on the above entitled investigation with Alfred J. Scotti, Chief Assistant District Attorney and Chief of the Rackets Bureau, and am familiar with all the matters developed in the course of said investigation.

The District Attorney of New York County has been conducting before the Fourth November 1953 Grand Jury of the County of New York an investigation, bearing the above title, of the disposition of the general funds of certain labor unions and of the activities of officials of said labor unions in the disposition of said funds.

[fol. 8] The said Grand Jury seeks to determine whether certain labor officials and representatives of the aforesaid labor unions have conspired to steal and have stolen property belonging to said unions, in violation of sections 580 and 1290 of the Penal Law of the State of New York.

The said Grand Jury in the conduct of the aforementioned investigation has heard evidence concerning the disposition of certain general funds of the Distillery, Rectifying, Wine and Allied Workers' International Union of America, (A. F. of L.). This evidence covers a seven-year period ending November 15, 1954.

Joseph C. O'Neill is general president of the Distillery, Rectifying, Wine and Allied Workers' International Union of America (A. F. of L.), chairman of the Executive Board, and chairman of the Social Security Department, i.e., the welfare fund of said union. His testimony is sought by the said Grand Jury on the circumstances relating to the aforementioned disposition of the general funds of the Distillery, Rectifying, Wine and Allied Workers' International Union of America (A. F. of L.).

In view of the foregoing, it is respectfully submitted that the said Joseph C. O'Neill is a material and necessary witness in the said Grand Jury investigation.

The District Attorney's office has made efforts, all without success, to secure the attendance of Joseph C. O'Neill as a witness before the said Grand Jury. Joseph C. O'Neill has consistently refused to appear to testify. His home and office are in Chicago, Illinois, Illinois has no reciprocal [fol. 9] witness statute. Therefore, the District Attorney's office has been powerless to compel Joseph C. O'Neill's attendance by court process.

Information available to the District Attorney of the County of New York establishes the following:

The biennial convention of the Distillery, Rectifying, Wine and Allied Workers' International Union of America (A. F. of L.) is scheduled to be held in Miami, Florida, on April 23, 1956. Arrangements have been made by the union to hold the convention at the Monte Carlo Hotel, in Miami. Joseph C. O'Neill, as general president of the union, is required by the constitution of the union to conduct the proceedings of the convention.

Arrangements have been made for Joseph C. O'Neill's attendance and presence at the Monte Carlo Hotel, Miami, Florida, on April 23, 1956.

The presence of the said Joseph C. O'Neill as a witness before the said Grand Jury will be required for a period of

fifteen days from the date of his arrival in New York County. The said Grand Jury convenes at the Criminal Courts Building, 155 Leonard Street, in the County, City and State of New York.

The attendance of the said Joseph C. O'Neill before the said Grand Jury cannot be ensured voluntarily.

It will not cause undue hardship to the said Joseph C. O'Neill to attend and testify before the said Grand Jury. [fol. 10] I, therefore, respectfully request that this Court, pursuant to Section 618-a of the Code of Criminal Procedure of the State of New York (Chapter 387 of the Laws of 1936), issue a certificate under the seal of this Court certifying to the courts of the State of Florida that the said Joseph C. O'Neill is a material and necessary witness in the said Grand Jury investigation and that he will be required to attend and testify before the said Grand Jury for a period of fifteen days from the date of his arrival in New York County, at the Criminal Courts Building, 155 Leonard Street, in the County, City and State of New York.

I further respectfully request that the certificate applied for herein upon issuance be authorization to me to reveal the subject of the said investigation to the extent set forth herein.

I further request that the Court recommend that the said Joseph C. O'Neill be taken into immediate custody in Florida and delivered to an officer of the State of New York to assure his attendance in this State, and request further that the Court recommend that in lieu of notification of any hearing on the certificate of this Court the Court in Florida direct that such witness be forthwith brought before the Court for said hearing. I make this request because the said Joseph C. O'Neill has resisted all efforts to persuade him to attend in New York before the said Grand Jury. He has no permanent residence in Florida, will remain in Florida only a few days and, I am informed, will return to the State of Illinois, which state does not make provisions for commanding persons within its borders to attend and testify in a sister state.

[fol. 11] No previous application for this or a similar certificate and recommendation has been made.

/s/ Francis X. Clark

Sworn to before me this 19th day of April, 1956.

/s/ Frank J. Goss

(Frank J. Goss, Notary Public for the State of New York, Qualified in Queens County, No. 41-6605900, Certificate filed with New York County Clerk, Commission expires March 30, 1958.)

[fol. 13] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

Criminal 1719

In the Matter

of

the Application of the People of the State of New York for an Order Requiring One

JOSEPH C. O'NEILL

to attend and testify before the Grand Jury of the County of New York, State of New York.

ATTACHMENT AND RETURN—Filed April 23, 1956

To: The Sheriff of Dade County, Florida

Whereas, there has been presented to me as a Judge of the Circuit Court of the Eleventh Judicial Circuit, Dade County, State of Florida, a court of record, a certificate dated April 20, 1956, of the Honorable Mitchell D. Schweitzer, Judge of the Court of General Sessions of the County of New York, a court of record of the State of New York, certifying that there is now pending in that court a criminal

investigation by the Fourth November, 1953 Grand Jury of the County of New York, entitled "The People of the State of New York v. John Doe"; that a certain Joseph C. O'Neill, now within the County of Dade, State of Florida, is a necessary and material witness for said State of New York in the Criminal Proceeding being conducted by the said Grand Jury; that the presence as a witness of said Joseph C. O'Neill will be required before the said Grand Jury at the Criminal Courts Building, 155 Leonard Street, County, City and State of New York, for a period of fifteen days from the date of his arrival in New York City; and recommending that said Joseph C. O'Neill be taken into [fol. 14] immediate custody and delivered to an officer of the State of New York to assure his attendance in New York.

It Is Hereby Ordered, that you attach Joseph C. O'Neill and bring him forthwith before me to show cause why an order of this Court should not issue to take him into immediate custody and deliver him to an officer of the State of New York to assure his attendance in New York.

Entered as an order of this Court this 23 day of April, 1956.

/s/ George E. Holt, Circuit Judge.

[fol. 15] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

Criminal No. 1719

[Title omitted]

ORDER TO SHOW CAUSE AND RELEASING O'NEILL ON BAIL—April 23, 1956

This Cause having this day come on to be heard upon the Rule to Show Cause why the respondent Joseph C. O'Neill should not be returned in the custody of officers of the State of New York, to be returned to the State of New York, for the purpose of appearing before the November, 1953 Grand

Jury of the County of New York, and the said respondent having appeared in open court in person, and S. G. Lippman, Attorney of the Bar of Illinois and District of Columbia, having appeared in company with the respondent Joseph C. O'Neill, and it being represented to the Court by said attorney that the said respondent Joseph C. O'Neill is presently within the jurisdiction of this Court, presiding at the convention of Distillery Rectifying Wine and Allied Workers of America, A.F. of L. and C.I.O., presently in session at the Monte Carlo Hotel on Miami Beach, Florida, and having requested the Court for the opportunity to review the subject matter upon which the Rule to Show Cause is based, and for an opportunity to file a response to said Rule, and the Court being fully advised in the premises, upon consideration thereof, it is

[fol. 16] Ordered and Adjudged that the respondent Joseph C. O'Neill file his response to the Rule to Show Cause within twenty (20) days from the date hereof, and that said cause should be continued until the 15 day of May, A.D., 1956. It is further

Ordered and Adjudged that the respondent Joseph C. O'Neill be and he is hereby released from the custody of the Sheriff of Dade County, upon his giving good and sufficient bond with proper sureties in accordance with the law, returnable to this Court, in the amount of $2,500. It is further

Ordered, Adjudged and Decreed that this Court retain jurisdiction over the persons hereto, and the subject matter hereof until further order of this Court.

Done and Ordered in Chambers, this 23 day of April, A.D., 1956.

/s/ George E. Holt, Circuit Judge.

[fol. 17] CLERK'S NOTE RE BOND

Appearance Bond made by Joseph C. O'Neill as Principal and Capitol Indemnity Insurance Company as Surety to the Governor of the State of Florida in the sum of $2500.00; said Bond was filed in his office on April 24, 1956 and is retained by his office.

[fol. 18] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY, FLORIDA

Criminal No. 1719

[Title omitted]

MOTION TO EXTEND TIME TO FILE RESPONSE TO RULE TO SHOW CAUSE—Filed May 8, 1956

Comes now Joseph C. O'Neill, by his undersigned attorney and respectfully shows unto the Court that the undersigned has been retained as counsel for said Joseph C. O'Neill and that the legal questions arising in connection with said application and the Rule to Show Cause issued therein is a difficult question requiring more than an ordinary amount of research, and by the Order to Show Cause Joseph C. O'Neill is required to file a response to said Motion within 20 days, which is by May 13, 1956, and said cause is set for hearing on May 15, 1956.

Wherefore: He prays that the Court enter an Order extending and enlarging the time for filing his response for an additional period of 15 days from said May 13, 1956, and extend the time for hearing to a suitable date after the filing of such response.

/s/ L. J. Cushman, Attorney for Joseph C. O'Neill.

[fol. 19] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY, FLORIDA

Criminal No. 1719

[Title omitted]

ORDER EXTENDING TIME TO FILE RESPONSE TO RULE TO SHOW CAUSE—May 8, 1956

Upon Motion of Joseph C. O'Neill, it is

Ordered that said Joseph C. O'Neill be and he is hereby allowed until the 28 day of May, 1956, within which to file

his response to the Rule to Show Cause in the above entitled matter and said cause is set for further hearing on the 18 day of June, 1956, at 2:30 P.M. for further hearing.

Done and Ordered in the City of Miami, Dade County, Florida, this 8 day of May, 1956.

/s/ George E. Holt, Circuit Judge.

[fol. 20] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

Criminal No. 1719

[Title omitted]

RESPONSE TO RULE TO SHOW CAUSE AND MOTION TO QUASH—
Filed May 28, 1956

Respondent, Joseph C. O'Neill, whose correct name is Joseph O'Neill, for his response to the Rule to Show Cause heretofore issued, and directed to him in the above entitled matter, dated April 23, 1956, says:

First: That Chapter 942 Florida Statutes 1955, and particularly Sections 942.01 to 942.06 Florida Statutes, entitled the "Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings" and each and every section thereof, separately and severally, and Section 618-a, of the Code of Criminal Procedure of the State of New York, and each and every section thereof, are unconstitutional, and null and void, because:

(1) Each of said Acts and each and every section thereof, separately and severally, is in contravention of, and violates the Fourth Amendment to the Constitution of the United States and Section 22 of the Declaration of Rights of the Constitution of Florida, in that same denies to respondent, Joseph C. O'Neill, the right to be secure in his person against unreasonable seizure, and permits and authorizes the issuance of a warrant or order for his

seizure, arrest and imprisonment without probable cause, and without requiring any showing of probable cause by indictment, information, affidavit or otherwise that he is or has been guilty of any crime or offense against the laws of Florida, the laws of New York or the laws of any other state or territory.

[fol. 21] (2) That each of said Acts, and each and every section thereof, separately and severally, is in contravention of and violates the Fifth Amendment to the Constitution of the United States and Section 12 of the Declaration of Rights of the Constitution of Florida, in that the above entitled proceedings thereunder deprive Respondent of his liberty without due process of law.

(3) That each of said Acts, and each and every section thereof, separately and severally, is in contravention of and violates the Sixth Amendment to the Constitution of the United States and Section 11 of the Declaration of Rights of the Constitution of Florida.

(4) That each of said Acts, and each and every section thereof, separately and severally, is in contravention of and violates the Eighth Amendment to the Constitution of the United States and Section 9 of the Declaration of Rights of the Constitution of Florida, in that same does not provide for bail.

(5) That each of said Acts, and each and every section thereof, separately and severally, is in contravention of and violates Article Four, Section 2, and the Fourteenth Amendment to the Constitution of the United States in that same abridges the privileges and immunities of Citizens of the United States, and deprives respondent of his liberty without due process of law and denies respondent the equal protection of the laws.

(6) That each of said Acts, and each and every section thereof, separately and severally, is too vague, general and indefinite that same sets forth no rule or standard by which the Circuit Court of Dade County, Florida, or any other Court of Record can determine whether respondent is a material and necessary witness before said Grand

Jury, nor whether it will or will not cause respondent undue hardship to be compelled to attend and testify before said Grand Jury, and that said lack of any established or fixed rule of law by which to ascertain said facts de-
[fol. 22] prives respondent of his liberty without due process of law, and without any right or opportunity to make any defense to the application for his arrest or seizure, in contravention of and in violation of the Constitution of the United States, and the Constitution of Florida.

(7) That sub-section (2) of Section 942.02 Florida Statutes ~~1955~~, is in contravention of and violates the Sixth Amendment to the Constitution of the United States and Section 11 of the Declaration of Rights of the Constitution of Florida, and the Fifth and Fourteenth Amendments to the Constitution of the United States, in making or attempting to make the Certificate of the Judge prescribed in sub-section (1) of said Section 942.02 Florida Statutes 1955 evidence against respondent upon the hearing.

(8) Said Acts, and each of them, and every section thereof, separately and severally, constitutes an Agreement or Compact between two or more states, or an attempt to enter into such Compact, in contravention and violation of Section 10 of Article I of the Constitution of the United States, without the consent of Congress.

Second: That he is a citizen, and resident of the State of Illinois, having his home and domicile in Elmwood Park, a suburb of the City of Chicago, Cook County, Illinois, and has never been a citizen nor resident of the State of Florida, nor a citizen nor resident of the State of New York, and that on or about April 23, 1956, he came to the State of Florida for a temporary sojourn of a few days to attend a convention of Distillery, Rectifying, Wine and Allied Workers' International Union of America, A. F. of L. and C. I. O., which was in session on said date at the Monte Carlo Hotel, in the City of Miami Beach, Dade County, Florida, intending to remain in the State of Florida only during the time said convention was in session, and intending upon the adjournment thereof to

return to his home and place of domicile and residence in the State of Illinois.

[fol. 23] Third: That he is not guilty and has never been guilty of any violation of Sections 580 and 1290 of the Penal Laws of the State of New York, nor any other statute, rule, regulation or law of the State of New York or the State of Florida, and he says that none of the monies or funds of said Distillery, Rectifying, Wine and Allied Workers' International Union of America, A. F. of L. and C. I. O. are kept or deposited in the State of New York, and that none of said monies or funds have been kept or deposited in said State of New York, and that none of said monies or funds were stolen, and none of said monies or funds could have been stolen in the State of New York, because same were not, and never have been kept or deposited in said State at any time, including but not limited to said seven-year period ending November 15, 1954, and respondent denies that any offense against or violation of said Sections 580 and 1290 of the Penal Law of New York were committed by respondent, or any other officer, agent or employee of said Union at any time, including but not limited to said seven-year period ending November 15, 1954, and respondent says that he, Joseph C. O'Neill, is not now, and never has been charged in or by any indictment or information filed in any proceeding in any Court of the State of New York, with any offense against nor violation of Section 580 and 1290 of the Penal Law of New York, nor any other section of said Penal Law, nor any other statute, rule, regulation or law of New York, and he has never been charged by any Affidavit, or by any other proceedings in any Court of New York with any offense against or violation of said Sections of the Penal Law of New York or any other statute, rule, regulation or law of said State of New York, and no criminal charge or proceeding is pending against him in New York, and no such criminal proceeding has ever been pending against him in said State of New York.

Fourth: That he is not now charged, and never has been charged with any violation of any statute, rule, regu-

lation or law of the State of Florida, and no criminal charge [fol. 24] or proceeding is now pending against him in any Court of the State of Florida, and he is not now and never has labored under prosecution for any such offense or violation of any statute, rule, regulation or law of the State of Florida.

Fifth: That the affidavit of Francis X. Clark, an Assistant District Attorney in and for the County of New York, and State of New York, and the Certificate of the Judge based thereon, is insufficient in law to comply with the requirements of the Fourth Amendment to the Constitution of the United States and Section 22 of the Declaration of Rights of the Constitution of Florida, in that same fails to set forth any facts, showing what testimony, if any, is sought of or from respondent, and fails to set forth any facts which show or disclose that any testimony sought or expected of respondent is material and necessary in that: (1) Neither said affidavit nor the Certificate of the Court shows that there are no competent witnesses within the State of New York who can testify to the same matters or facts, if any, which are sought from respondent; (2) That in fact there are competent witnesses concerning said alleged matters present in the State of New York; (3) Same does not set forth any facts sufficiently designating or identifying the supposed subject or matter being investigated by said Grand Jury to enable the Circuit Court of Dade County, Florida, or any other Court of Record to ascertain or determine whether any testimony sought or expected of or from respondent is relevant, material or necessary to said alleged inquiry; (4) Same does not set forth distinctly what testimony is sought or expected of or from respondent so that the Circuit Court of Dade County, Florida, or any other Court of Record can ascertain or determine whether such testimony is or would be material or necessary to said inquiry.

Sixth: That it is not shown, and has not been made to appear either by the affidavit of Francis X. Clark, an Assistant District Attorney in and for the County and [fol. 25] State of New York, nor from the Certificate of the

Judge based thereon, that the laws of the State of New York, and the laws of each and every other state through which respondent may be required to pass by ordinary course of travel from Florida to New York will give respondent protection from arrest and the service of Civil and Criminal process, and no facts have been presented or shown that respondent will be afforded such protection as required by sub-section (2) of Section 942.02 Florida Statutes 1955, and respondent denies that any such protection has been or can be given him.

Seventh: That respondent is a citizen of and is domiciled in the State of Illinois, and he respectfully avers that it will cause him undue hardship to be compelled to go to the State of New York to testify before said Grand Jury, in that he will be compelled to leave his home, his family and business affairs for an undetermined time, and he has reason to believe, and does believe that if he should be ordered to proceed to the State of New York to testify before said Grand Jury, that he will be compelled to go in the custody of an officer of the State of New York as a common criminal and be imprisoned, confined and restrained of his liberty as a common criminal while in the State of New York, and he specifically denies that he will be caused no undue hardship.

Wherefore, respondent, Joseph C. O'Neill, prays for the causes and reasons aforesaid, that said Rule to Show Cause be Quashed, and discharged, and that the prayer or recommendation of said Certificate upon which same was based and issued be denied.

/s/ L. J. Cushman, Attorney for Joseph C. O'Neill,
601 Ainsley Building, Miami (32), Florida.

[fol. 26] Certificate of Mailing (omitted in printing).

[fol. 27]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY FLORIDA

Case No. 1719

[Title omitted]

ORDER CONTINUING BAIL—June 18, 1956

The above-styled cause coming on this day to be heard upon the certifucate (sic) of the State of New York, and the Response, and motion to quash filed by and on behalf of said Joseph O'Neill, and said Joseph O'Neill being personally present, and represented by counsel, and the Court having heard the arguments of counsel for the parties, and counsel for the State of New York having requested until Friday, June 22, 1956 within which to file a memorandum in support of said application and certificate, no decision or order having been made thereon, it is Considered, Ordered and Adjudged that said Joseph O'Neill be and he is hereby released upon the same bond as heretofore posted, until the further order of the Court.

Done and Ordered in the City of Miami, Dade County, Florida, this 18th day of June, 1956.

/s/ George E. Holt, Circuit Judge.

We Consent: /s/ Francis X. Clark, A. D. Atty, for the State of New York, County of New York.

/s/ L. J. Cushman, /s/ S. G. Lippman, for Joseph O'Neill.

[File endorsement omitted]

[fol. 123-A] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 124]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

Criminal No. 1719

In the Matter of

The Application of the People of the State of New York for an Order Requiring One

JOSEPH C. O'NEILL

to attend and testify before the Grand Jury of the County of New York, State of New York.

OPINION AND ORDER—July 20, 1956

HOLT, Circuit Judge:

This is an application by the People of the State of New York for an Order requiring Joseph C. O'Neill to attend and testify before the Grand Jury of New York County, New York, pursuant to Chapter 942, Fla. Statutes 1955, the "Uniform Law to Secure the Attendance of Witnesses from within or without a State in Criminal Proceedings", which, for the sake of brevity, will hereafter be referred to as "The Uniform Law", which was adopted in this state in 1941. On April 23, 1956, an Assistant District Attorney in and for New York County, New York, filed in the above entitled cause a Certificate of a Judge of the Court of General Sessions of the County of New York, supported by an affidavit of an Assistant District Attorney of said County, certifying that there was then pending in said court a criminal investigation by the Fourth November 1953 Grand Jury of said County entitled "The People of the State of New York v. John Doe", and that a certain Joseph C. O'Neill, then within Dade County, Florida, was a necessary and material witness for the State of New York in said criminal proceeding being conducted by said Grand Jury, and requesting that said Joseph C. O'Neill be taken into immediate custody and delivered to an officer

of the State of New York to be conveyed to New York in order to assure his attendance as a witness before said Grand Jury. Upon presentation of said Certificate, this Court issued an attachment for said Joseph C. O'Neill, [fol. 125] and a rule directed to him to show cause why an Order should not issue to take him into immediate custody and deliver him to an officer of the State of New York to assure his attendance in New York.

Joseph C. O'Neill was forthwith seized and arrested upon said Attachment and Rule to Show Cause, and brought before this Court in custody, and through his attorney, he requested time to review said matter upon which said Attachment and Rule to Show Cause was based, and to file a response to said Rule to Show Cause. This Court fixed bail at $2500.00, and allowed him time within which to file his response to said Rule to Show Cause. Thereafter, said Joseph C. O'Neill filed his response to said Rule to Show Cause and Motion to Quash, and this matter or cause came on to be heard on June 18, 1956, upon said Certificate of said Judge of the Court of General Sessions of New York County, New York, and said Rule to Show Cause issued thereon, and the response, and Motion to Quash same filed by, and on behalf of said Joseph C. O'Neill, who appeared in person and by counsel, the applicant being represented by Honorable Francis X. Clark, an Assistant District Attorney in and for the County of New York, assigned to the Rackets Bureau of the District Attorney's Office.

By his response to said Rule to Show Cause, said Joseph C. O'Neill objected to the entry of any Order that he be taken into immediate custody, or that he be delivered to an officer of the State of New York, upon the ground that said "Uniform Law", Sections 942.01 to 942.06 Fla. Statutes 1955) was unconstitutional and void, in that same was in contravention of certain provisions of the Constitution of the United States, and the Constitution of Florida, and that no sufficient showing had been made that he was or is a necessary, and material witness in said criminal proceeding, and other reasons, which will be noted hereinafter. Said matter was fully argued by counsel for the respective parties, and the argument was reported, transcribed, and

[fol. 126] submitted to the Court, together with briefs by counsel for the respective parties, all of which have been fully considered by the Court.

The "Uniform Law", first adopted by the National Conference of Commissioners on Uniform State Laws, in 1931, (See Note: 24 FSA 288), in point of fact is "Uniform" in name only, and in its general over-all outline, because almost every state which has adopted it, has made changes in its text. Although 25 years have elapsed since it was first proposed for adoption by the States and although it has been adopted in somewhat different form by 42 States and the Territory of Puerto Rico (See: 9 U.L.A. Supp. 33), there appear to be only eleven (11) reported decisions, listed in the Appendix to this Opinion, in which it has been considered, construed, or passed upon in any way; and none of those eleven decisions has considered or passed upon Sub-Section (3) of Section 942.02 Fla. Statutes, which is sought to be invoked in this proceeding.

The "Uniform Law" (Sections 942.01 to 942.06 Fla. Stat. 1955) appears to provide for two methods by which a witness may be compelled to appear and testify as a witness in another State. *First,* by the issuance of a "summons * * * directing the witness to attend and testify in the Court" of the other State, as provided in Sub-Section (2) of Section 942.02; in other words, by the issuance of a witness subpoena by a court of record of this State, directed to the witness, requiring him to go to another State, and appear and testify in the Court of such other State. *Second,* by the issuance or entry of an Order, provided by Sub-Section (3) of Sec. 942.02, that the witness be taken into immediate custody and delivered to an officer of the requesting State to be taken as a prisoner to the State where his attendance is desired as a witness. The Certificate which is the basis for this application, seeks to invoke the second method; that is, it recommends the immediate seizure of O'Neill, and his immediate delivery to officers of the State of New York.

The briefs filed by counsel for the Applicant and counsel for the Respondent, have not cited a single reported case in which any Court has considered or passed upon the con-
[fol. 127] stitutionality of the particular sub-section of the

"Uniform Law" (Sub-Section (3) of Sec. 942.02 Fla. Statutes), except *In Re Allen* (a) 1940, 49 Pa. D. & C. 631, in which the Court, after fully considering the constitutionality of the Act, held it unconstitutional, and expressly held (Text 642-644) that the Section attempting to provide for the immediate seizure of the witness and his immediate delivery to officers of the requesting State, is unconstitutional. The only other reported decision which refers to that particular Sub-Section of the Act is *U. S.* vs. *Monjar* (Del. 1946), 154 F. 2d 954, 170 A.L.R. 327, in which the Court merely refers to said Sub-Section, and holds that it should not be invoked against the Clerk of the United States District Court for the District of Delaware.

There appear to be only three reported decisions which have considered the constitutionality of the "Uniform Law", two in New Jersey, and one in Pennsylvania. *In Re Allen, supra,* decided in 1940, is the earliest of the three decisions, and in a well considered, well supported decision, the court held said Act unconstitutional because: (1) It violates the Fourteenth Amendment to the Constitution of the United States, which forbids any State to make or enforce any law which abridges the privileges and immunities of citizens of the United States; (2) violates the clause in the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property, without due process of law; and (3) violates the Constitutional guaranty that the people shall be secure in their persons from unreasonable searches and seizures. *In Re Cooper,* 127 N.J.L. 312, 22 A. 2d. 532, decided in 1941, is the next case in which the constitutionality of said Act was considered, but the question does not appear to have been fully presented; nor does it appear to have been fully considered or decided, and in that case, the provision authorizing the immediate seizure of the witness, and his immediate delivery to the officers of the requesting State (Sub-section (3) Sec. 942.02 Fla. Statutes) was not involved or considered. The third case, *In Re Saperstein,* 30 N. J. Super. 373, 104 A. 2d. 842, cert. den. 75 S.Ct. 110, 348 US 874, 99 L. Ed. 688, decided in 1954, primarily dealt with the question whether the "summons" [fol. 128] or subpoena provided for by the Act (Sub-Section

(2) Sec. 942.02 Fla. Statutes) authorized a subpoena duces tecum, and the provision relied upon in the case before the Court, Sub-Section (3), Sec. 942.02 Fla. Statutes, was not involved. The only point considered, so far as constitutionality of the Act was concerned, was whether it constituted a "compact" between states, in violation of the third clause of Section 10, Article I, of the Constitution of the United States, and the Court held that it did not constitute such a "compact". Thus, in the only three cases in which the constitutionality of the "uniform Law" has been considered, it has been held unconstitutional in one, and in the other two, its constitutionality does not appear to have been carefully or thoroughly argued, considered, or decided, but, in the only case (*In Re Allen, supra*) in which the constitutionality of Sub-Section (3) of Sec. 942.04, Fla. Statutes, has been considered, it was held unconstitutional. In view of the fact that the constitutionality of the "Uniform Law" has been considered in only three cases during the 25 years which have passed since it was first proposed, and by the courts of only two out of the 42 States which have enacted said law (i.e., Pennsylvania and New Jersey), it can hardly be said that its constitutionality is settled. Two other cases have been cited, bearing upon the constitutionality of the Act under consideration: *In Re Commonwealth of Pennsylvania,* 90 N.Y.S. 808, decided in 1904, and *Commonwealth of Massachusetts* v. *Klaus,* 145 App. Div. 798, 130 N. Y. S. 713, decided in 1911. The "Uniform Law" was adopted by the National Commissioners on Uniform State Laws in 1931, twenty years *after* the decision in the *Klaus* case, and twenty-seven years after the decision of the case in 90 NYS 808, both of which involved Section 618-a of the New York Code of Criminal Procedure, undoubtedly a forerunner of the "Uniform Law", but which did not contain any provision similar to sub-section (3) of Sec. 942.02 Fla. Statutes. It is also worthy of note that neither of those cases was decided by the highest court of the State of New York, and in the first (*In re Commonwealth of Pennsylvania,* 90 N.Y.S. 808), the Court held [fol. 129] said Act to be unconstitutional, while in the second (*Commonwealth* v. *Klaus,* 130 N.Y.S. 713), said Act was held constitutional by a divided court, with a well-con-

sidered, vigorous dissent. In conclusion, it may be said that the constitutionality of the "Uniform Law" (Sections 942.01 to 942.06 Fla. Statutes) is not settled, but appears to be in grave doubt.

In considering this case, it must be borne in mind that Joseph O'Neill is not under indictment in the State of New York, and it is not contended that he is a fugitive from justice so as to make him subject to extradition pursuant to the Uniform Interstate Extradition Law, Sections 941.01 to 941.37 Fla. Statutes 1955, or under the Federal Criminal Extradition Statute (Sections 3181 to 3195, Title 18 U.S.C.A.) expressly authorized by Section 2 of Article IV of the Constitution of the United States. It appears without question in this case that Joseph O'Neill is a citizen of Illinois, and that he resides, and has his home, and office or place of business in that state. He came into the State of Florida on or about April 23, 1956 for a few days' sojourn in connection with a convention which he was attending. He is not charged with having violated any law of the State of New York, or the State of Florida, or any other State.

It is settled beyond controversy or debate that the Courts of Florida have no jurisdiction to issue process running beyond the territorial limits of this State, and have no jurisdiction over persons, or property beyond the territorial limits of the State of Florida. "A court created within a sovereignty is necessarily limited as to its sphere of direct action on persons and things, real estate and chattels within that sovereignty." *Hotchkiss* vs. *Martin* (Fla.), 52 So. 2d. 113. Process of one State has no force or validity within the territorial limits of another State, and cannot run beyond the territorial limits of the State. *Passet* v. *Chase,* 91 Fla. 522, 107 So. 689. A court created within and for a particular territory is limited in its jurisdiction to such territory, and no judicial process has any force outside such limits. *Phillips* v. *State,* 75 Fla. 93, 77 So. 673. "A warrant of arrest issued in one State may not be exe-
[fol. 130] cuted in another State, for it has no validity beyond the boundaries of the State by whose authority it was issued." *3 Fla. Jur. Arrest, p. 55.* It has been settled ever since *Pennoyer* v. *Neff,* 95 US 714, 24 L. Ed. 565, that

the Legislature of a State cannot authorize process running beyond the territorial limits of the State. Under the authorities cited, it is clear that the Legislature of this State has no constitutional power to confer jurisdiction upon the Courts of this State to issue process running beyond the territorial limits of the State of Florida, and that is the effect of sub-section 1 of Section 942.02 Fla. Statutes 1955. Just as the Legislature of this State is powerless to confer jurisdiction upon this Court to issue witness subpoenae or other process running into Georgia, Alabama, or any neighboring State, it is likewise powerless to confer jurisdiction upon this Court to issue witness subpoenae or other process running into other States, such as New York. If a witness subpoena were issued by this Court commanding a witness to appear before a court of the State of New York, such process would be of no force and effect as compulsory process. Insofar as Sub-section 1 of Section 942.02, Fla. Statutes, 1955, attempts to confer any such power, authority, or jurisdiction upon any court of record of this State, it is unconstitutional, void, and of no effect. Passing for the moment, the fact that the Legislature of this State is powerless to confer upon this, or any other Court of the State of Florida, jurisdiction to issue process running beyond the limits of the State, Section 942.02 Fla. Statutes 1955 also violates the Fourteenth Amendment to the Constitution of the United States in that it abridges the privileges and immunities of citizens of the several states, since it impairs the right of free ingress and egress from state to state, which is one of the rights of national citizenship guaranteed by the Fourteenth Amendment to the Constitution of the United States. *Edwards* v. *California,* 314 US 160; 62 S. Ct. 164; *In Re Allen, supra; Commonwealth* v. *Klaus, supra,* and *Commonwealth* v. *Pennsylvania, supra.*

[fol. 131] Perhaps the most serious objection to the constitutionality of the "Uniform Law" (Sections 942.01 to 942.04 Fla. Statutes) is found in the provisions of Sub-Section (3) of Sec. 942.02, which attempts to authorize a court of this State to order a citizen not charged with the commission of any crime, or even suspected of having committed any crime, to "be taken into immediate custody

and delivered to an officer of the requesting State", or, "in lieu of issuing subpoena or summons, order that such witness be forthwith taken into custody and delivered to an officer of the requesting State." This sub-section makes no provision for bail, and if followed literally, does not contemplate or permit bail, but attempts to authorize any court of record to order a citizen to be arrested, seized and held without bail, and to be delivered, without bail, to an officer of the requesting State to be carried away against his will as a prisoner to another State. Neither counsel has cited any reported case holding this sub-section of the Act under consideration constitutional. This Section was merely mentioned in passing in *U. S.* v. *Monjor* (Del. 1946), 154 F. 2d 954, 170 ALR 327, with the observation that should a subpoena be issued to the Clerk of the United States Court for the District of Delaware, he should not be subjected to the provisions of that Section. In the case of *In Re*: *Allen, supra,* the Court held that the failure of this Section to provide for bail rendered the Act unconstitutional. The Court, in discussing this subject (Text 643-644), said:

> "The Statute under consideration with its provisions for taking a witness into custody and delivering him bodily over to authorities from a foreign jurisdiction is, in our opinion, clearly unreasonable and unwarranted. A person charged with a crime can be taken from one State to another in order that he may be punished for the crime. It is significant that the clause in the Federal Constitution which reads as follows: "A person charged in any State with Treason, Felony, or other crime, who shall flee from Justice, and be found in another State, shall on Demand of the Executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime"; is part of Section 2 of Article IV of the Federal Constitution, and it immediately follows and thus qualifies the opening sentence of that section which guarantees to the citizens of each State all the privileges and immunities of citizens in the several States."

[fol. 132] "The authority for extradition is found in the Federal Constitution and the Federal Statutes

passed pursuant thereto. See R. S. par. 5278, 18 U. S. C. Par. 662. Roberts v. Reilly, 116 U. S. 80 94 (1885), and Innes v. Tobin, 240 U. S. 127, 131 (1916). It would seem that if it required a provision of the Federal Constitution to provide for the compulsory transfer of a person charged with a crime from one State to another, a fortiori, an Act for the compulsory transfer of an innocent person from one State to another for the purpose of giving viva voce testimony should have like express constitutional authority, and that the Act should permit the proposed witness to enter his recognizance as in extradition proceedings. A fugitive from justice or a person in this State charged with a crime in another State is allowed to enter bail unless the crime with which he is charged is punishable by death or life imprisonment; Act of April 2, 1927, P. L. 327, Sec. 16. Surely, it is not due process of law to protect the liberty of criminals and fugitives from justice to a greater degree than the liberty of honest and law-abiding citizens of this State."

The right to bail in Florida is not a mere "privilege", which may be denied in the Court's discretion. The right to bail is absolute, unless the person is charged with a capital offense, and even then, he is entitled to bail unless the proof of guilt is evident or the presumption great. *Ex Parte McDaniel,* 86 Fla. 145, 97 So. 317; *Bozovichar* v. *States,* Ind.) 103 N. E. 2d 680; Section 9, Declaration of Rights of the Constitution of Florida. The right to bail under the Constitution of the United States, and other States is almost universal and unrestricted, except in capital cases where the proof of the prisoner's guilt is evident or the presumption of his guilt is great. See: Sec. 5, Bill of Rights of the Constitution of New York: Eighth Amendment to the Constitution of the United States. "A denial of such right is a deprivation of liberty without due process of law." 3 Fla. Jur. Bail and Recognizance, p. 37-38.

Sub-section 3 of Section 942.02 Fla. Statutes, invoked by the applicant in this case, is clearly unconstitutional and void, and the application for an order to take Joseph O'Neill into immediate custody must be and is hereby denied.

[fol. 133] Sub-Section 2 of Section 942.02 Fla. Statutes requires that this Court determine that the witness is "material and necessary." Neither the Certificate, nor the affidavit upon which it is based, set forth any *facts* from which this Court can determine that O'Neill is a "material and necessary" witness before the Grand Jury, and the showing made in that respect is no stronger than the showing made in the *Application of Stamler*, (NY 1952) 279 App. Div. 908, 111 NYS 2d. 313, in which the State of New Jersey sought a subpoena order to require Frank Costello to appear and testify as a witness in a criminal proceeding in that State. In that case, the Court said:

> "Section 618-a of the New York Code of Criminal Procedure contemplates, at the very least, that the Court of the demanding State shall have passed on the question whether the testimony will be material in the prosecution pending in that State. Whether a mere statement that the witness is a material witness would be sufficient without further recital of the charge and the facts upon which the finding of materiality was based, we do not need now to pass upon. At least upon the certificate produced in this case it was improper for the Judge of the Court of General Sessions to grant the subpoena-order without any proof of the materiality of the testimony of the Order."

In *State* v. *Blount* (Ore. 1954) 200 Ore. 35, 264 P. 2d. 419, cert. den. 74 S. Ct. 711, 347, U. S. 962, 98 L.Ed. 1105, the Oregon Court held that the showing of the facts required by the "Uniform Law" to show that the witness is "material and necessary", should at least be as great as the showing required in order to obtain a continuance upon the ground of the absence of a material witness, and that it must appear from a statement of the *facts* that such witness is "material and necessary", and that a mere statement to that effect is insufficient. In *State* v. *Foquette* (Nevada 1950) 67 Nev. 505, 221 P. 2d. 404, cert. den. 71 S. Ct. 799, 341 US 932, 95 L. Ed. 1361; 72 S. Ct. 369, 342 US 928, 96 L.Ed. 691, the Court again held that under the Act in question the facts must be stated to show that such a wit-

ness is both material and necessary. It is well settled in Florida that in order to secure a continuance upon the ground of the absence of a material witness, the applicant [fol. 134] must state the *facts* to which such witness would testify, in order that the Court may determine from the *facts* that the testimony of the absent witness is material and necessary. *Harrell* v. *Durrance,* 9 Fla. 490; *Reynolds* v. *Smith,* 49 Fla. 217, 38 So. 903. Tested by this Rule, the certificate and the affidavit upon which this application is based fall far short of any showing that Joseph O'Neill is a "material and necessary witness" in any proceeding pending in New York. It is a safe rule that in any proceeding in which an application for the seizure of any person is sought, the application should state the *facts* upon which such application is based. Section 22 of the Declaration of Rights of the Constitution of Florida guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and that no warrants shall be issued but upon probable cause supported by oath and affirmation. Warrants for the arrest of any person can only be issued in this State upon oath indicating a probable violation of the law. Sec. 901.02 Fla. Statutes, 3 Fla. Jur. Arrest, pp. 48-49; *Conrad* v. *Van Buren, Cir. Judge,* 144 Mich. 492, 108 NW 347. Neither the affidavit, nor the certificate upon which this application is based set forth any *facts* from which it is made to appear that Joseph O'Neill is a "material and necessary witness", and in the absence of such a showing, this Court is not authorized to issue any summons, or subpoena, and the mere statement of a conclusion that he is a material or necessary witness is insufficient. *Application of Stamler, supra; State* v. *Blount, supra; State* v. *Foquette, supra.*

Upon consideration of the application of the People of The State of New York, the Court is of the opinion that said Application should be denied, and this proceeding dismissed, and therefore, it is

Considered, Ordered, and Adjudged, as follows:

1. That the Motion of Joseph O'Neill to quash and discharge the Rule to Show Cause issued in the above-styled [fol. 135] cause, and directed to him, be and the same is

hereby granted, and said Rule to Show Cause is hereby quashed and discharged, and said Joseph O'Neill is hereby discharged from custody thereunder.

2. That Joseph O'Neill, and the surety upon his bond posted pursuant to said Rule to Show Cause be, and they and each of them are hereby discharged of all liability thereunder.

3. That the attachment issued in the above styled cause for the arrest of said Joseph O'Neill, described therein as Joseph C. O'Neill, be and the same is hereby quashed, and dismissed, and the application of the People of the State of New York for an Order requiring said Joseph O'Neill, named and described therein as Joseph C. O'Neill, be and the same is hereby dismissed, with prejudice and at the cost of said applicant.

Done and Ordered in the City of Miami, Dade County, Florida, this 20 day of July, 1956.

George E. Holt, Circuit Judge.

Appendix

(1) People v. Parker (N. J.—1936), 16 N. J. Misc. 471, 1 A. 2d. 54.

(2) In Re Cooper (N. J.—1941), 127 N.J.L. 312, 22 A. 2d. 532.

(3) In Re Saperstein (N. J.—1954), 30 N.J. Super. 373, 104 A. 2d. 842, Cert. Den. 75 S. Ct. 110, 348 U. S. 874, 99 L. Ed. 688.

(4) U. S. v. Monjor (Del. 1946), 154 F. 2d. 954.

(5) Application of Stamler (N. Y. 1952), 279 App. Div. 908, 111 NYS 2d. 313.

[fol. 136] (6) State v. Blount (Ore. 1954), 200 Ore. 35, 264, P. 2d. 419, Cert. Den. 74 S. Ct. 711, 347 US 962, 98 L. Ed. 1105.

(7) State v. Foquette (Nev. 1950), 67 Nev. 505, 221 P. 2d. 404, Cert. Den. 71 S. Ct. 799, 341 U. S. 932, 95 L.Ed. 1361, 72 S.Ct. 369, 342 US 928, 98 L.Ed. 691.

(8) Vore v. State (Neb. 1954), 158 Neb. 222, 63 N. W. 2d. 141.

(9) People v. Simon (Cal. 1951), 107 Cal. App. 2d. 105, 236 P. 2d. 855, Cert. den. 72 S.Ct. 645, 343 US 911, 96 L.Ed. 1327.

(10) State ex rel Butler v. Swenson (Minn. 1954), 66 N. W. 2d. 1.

(11) In Re Allen (Pa. 1943), 49 Pa. D & C. 631.

[fol. 137]

IN THE CIRCUIT COURT OF DADE COUNTY, FLORIDA

NOTICE OF APPEAL—Filed August 15, 1956

The Applicant, the People of the State of New York, takes and enters its appeal to the Supreme Court of Florida to review the opinion and order of the Circuit Court for Dade County, bearing date the 20th day of July 1956, entered in the above-styled cause, and recorded in the records of said Court in Circuit Court Minute Book 305, Page 145, and all parties to said cause are called upon to take notice of the entry of this appeal.

Frank S. Hogan, District Attorney, New York County, New York, 13, New York; Richard W. Ervin, Attorney General, State of Florida; George A. Brautigam, State Attorney, Eleventh Judicial Circuit of Florida, Attorneys for Applicant.

By William A. Meadows, Jr., Assistant State Attorney.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 138]

IN THE CIRCUIT COURT OF DADE COUNTY, FLORIDA

ASSIGNMENTS OF ERROR—Filed August 20, 1956

Comes Now the Appellant, the People of the State of New York, by and through its undersigned attorneys, and files this its Assignments of Error, and says:

1. That the Court erred in granting the Motion to Quash the Rule to Show Cause in these proceedings.

2. That the Court erred in its ruling that Chapter 942.02, Florida Statutes, 1955, is unconstitutional.

3. That the Court erred in its ruling that sub-section 1 of Chapter 942.02, Florida Statutes 1955, is unconstitutional, void, and of no effect insofar as the portion of this statute which confers jurisdiction upon any court of record in the State of Florida to make an order directing a witness to appear before a court in another State.

4. That the Court erred in its ruling that sub-section 1 of Chapter 942.02 Florida Statutes 1955 violates the 14th Amendment to the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the several states.

5. That the Court erred in its ruling that sub-section 3 of Chapter 942.02 Florida Statutes 1955 is unconstitutional and void.

6. That the Court erred in its ruling that neither the affidavit nor the certificate upon which your application was based, set forth any facts from which it is made to appear that the applicant is a material and necessary witness, as required by sub-section 2 of Chapter 942.02 Florida Statutes 1955.

[fol. 139] Frank S. Hogan, District Attorney, New York County, New York, 13, New York; Richard W. Ervin, Attorney General, State of Florida;

George A. Brautigam, State Attorney, Eleventh Judicial Circuit of Florida; By: William A. Meadows, Jr., Assistant State Attorney, Attorneys for Appellant.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 140]

IN THE CIRCUIT COURT OF DADE COUNTY, FLORIDA

DIRECTIONS TO THE CLERK

The Clerk of the above-styled Coaurt (sic) will please prepare the original record in this case, in accordance with Rule 33 (2), Florida Supreme Court Rules for transmission to the Clerk of the Supreme Court of Florida, and will include therein the following:

All of the original papers in this case, except Order and Opinion, Notice of Appeal, and all other appeal papers, and the Clerk will include certified copies of the Order and Opinion, the Notice of Appeal and all other appeal papers, and shall append his certificate, identifying the papers with reasonable definiteness, as provided in Supreme Court Rule 33 (2).

Frank S. Hogan, District Attorney, New York County, New York, 13, New York; Richard W. Ervin, Attorney General, State of Florida; George A. Brautigam, State Attorney, Eleventh Judicial Circuit of Florida; By William A. Meadows, Jr., Assistant State Attorney, Attorneys for Appellant.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 140-A] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 141]

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1958

Case No. 28,978

In Re: The Application of the People of the State of New York for an Order Requiring One

JOSEPH C. O'NEILL

to Attend and Testify Before the Grand Jury of the County of New York, State of New York.

OPINION—Filed January 22, 1958

An Appeal from the Circuit Court for Dade County, George E. Holt, Judge.

Richard W. Ervin, Attorney General, Reeves Bowen, Assistant Attorney General and Frank S. Hogan, District Attorney, New York County, (New York, N. Y.), for Appellant.

L. J. Cushman, for Appellee.

THOMAS, J.:

On 23 April 1956 there was filed in the Circuit Court of Dade County, Florida, the certificate of Honorable Mitchell D. Schweitzer, Judge of the Court of General Sessions of the State of New York, reciting that he had read an affidavit signed by an Assistant District Attorney of the County of New York, recommending that one Joseph C. O'Neill be taken into custody and delivered to an officer of the State of New York to assure his attendance there and that the witness, O'Neill, be brought immediately before the Florida court for hearing on the matter of extradition.

It was stated in the certificate that the District Attorney had been conducting before a grand jury an investigation of the use of funds of certain labor unions and the activities

of union officials in the handling of such monies. The grand [fol. 142] jury was undertaking to determine whether or not union officials and representatives had conspired to steal funds belonging to the unions in violation of Secs. 580 and 1290 of the Penal Law of New York.

In the certificate O'Neill was designated a material and necessary witness in the investigation. He was described as General President of the Distillery, Rectifying, Wine and Allied Workers' International Union of America, Chairman of the Executive Board, and Chairman of the Social Security Department which administers the welfare fund of the union. The grand jury purposed to learn from him about disposition of the union's funds.

According to the judge's certificate efforts to procure the attendance of O'Neill had been unsuccessful and he had refused to appear voluntarily and testify. Inasmuch as he resided in Illinois, in which no reciprocal witness statute has been enacted, the office of the District Attorney could not compel his presence.

Continuing, it was stated that the District Attorney learned that a convention of the union would be held in Miami 23 April 1956 and that under the constitution of the union the president, O'Neill, was required to be present and preside.

By the certificate O'Neill was assured of protection from arrest or service of civil and criminal process in connection with matters arising before his entrance into New York should he appear under court order.

We see no occasion to give a summary of the statements in the affidavit of the Assistant District Attorney as they seem harmonious with the ones appearing in the judge's certificate which contains sufficient information for determination of the points in controversy.

There was incorporated in the affidavit the request that the court under Sec. 618-a of the New York Code of Criminal Procedure issue the certificate we have described.

Upon the filing of the certificate in the Circuit Court of Dade County the judge ordered the sheriff to attach O'Neill [fol. 143] and bring him forthwith before the court to show cause why an order should not immediately issue for his custody and his delivery to an officer of the State of New

York. Evidently the same day the certificate was filed O'Neill was apprehended and gave bond, although there is no provision in our statute, Sec. 942.02, Florida Statutes 1955, for such a bond.

A month later O'Neill filed a response and after another month had passed a hearing was held by the circuit judge when arguments of Assistant District Attorneys from New York and O'Neill's counsel were presented but at which no testimony was taken. Subsequently the judge, basing his opinion on the record, concluded that Sec. 942.02, supra, was unconstitutional because by it the state was given extraterritorial jurisdiction, the right of ingress and egress across the state line was impaired and the witness could be taken into custody here and delivered into custody of an officer of another state without bail. Also, the judge thought the certificate of the Judge of the Court of General Sessions of New York and the affidavit of the Assistant District Attorney did not depict a situation showing that O'Neill was a material and necessary witness.

We dismiss the last point with the observation that it is plain to us O'Neill is a material and necessary witness in the investigation of the misuse of funds of the union. By the terms of the act, the certificate of the judge must be taken as "prima facie evidence of all the facts stated therein." It may be logically deduced that because of the positions held by O'Neill he is familiar with the funds of the organization if, indeed, he does not supervise or control them, and we think that in an investigation of the administration of those funds he would prove a material and necessary witness.

It is stated in the brief of the Attorney General that the "appellant" filed a notice of appeal and filed "its" assignments of error and "its" directions to the clerk. [fol. 144] Upon an examination of the record, we find that the notice of appeal was filed by "The Applicant, the People of the State of New York" and that it, the assignments of error and the directions to the clerk, carried the names of the District Attorney of New York County, the Attorney General of Florida, the State Attorney of the Eleventh Judicial Circuit and an Assistant State Attorney but were signed only by the Assistant State Attor-

ney. On the notice of appeal these officers were described as attorneys for "applicant" and on the assignments of error and directions to the clerk, as attorneys for "appellant".

Soon after the appeal was lodged here the attorney for Joseph C. O'Neill moved to dismiss it, and the members of the court sitting at the time deferred a ruling until hearing of the cause on the merits.

We have now reconsidered the motion and have concluded we should proceed to a determination of the dispute on the merits, that is, the adjudication of the validity of Sec. 942.02, supra. The motion was based on the ground that this court had no jurisdiction because the order attempted to be reviewed was entered in a criminal proceeding and the state had no right to appeal except from orders specified in Sec. 924.07, Florida Statutes 1955, of which the order of the circuit judge was not one, and further that the People of the State of New York had no right of appeal. The Attorney General countered on the ground that the case was a civil proceeding and asked this court to consider the appeal a petition for certiorari, under Sec. 59.45, Florida Statutes 1955, if it appeared that the appeal had been improvidently taken.

We agree with the Attorney General that the proceeding is not criminal and that appeal was the proper method of review as, by Sec. 5 of Art. V of the Constitution, this court had "appellate jurisdiction in all cases at law * * * originating in Circuit Courts * * *." The case originated in the circuit court and the appeal was filed before the effective date of the amendment of Art. V adopted in November 1956.

[fol. 145] The procedure followed by the Attorney General is rather unusual because the record does not show any participation by him until the circuit judge had ruled. His name first appears on the notice of appeal. But the State of New York, in our opinion, had the right to appeal as O'Neill would have had if the judgment had been unfavorable to him. The appeal became effective when the notice was filed by the District Attorney of New York County. The introduction of the Attorney General into the controversy was somewhat unorthodox but in view of

the mandate in Sec. 22 of Art. IV of the Constitution that he "perform such other legal duties as may be prescribed by law" and the requirement of Sec. 16.01, Florida Statutes 1955, that he "appear in and attend to in behalf of the state, all suits or prosecutions, civil or criminal, or in equity, in which the state may be a party, or in any wise interested * * *" we will consider his entrance via the notice of appeal an effort to present the interest of the state in the preservation of the statute. This concern of the state in maintaining the validity of the law comes from the law's reciprocal nature. If the act is held unconstitutional, then, of course, the attendance here of witnesses residing in states having such a uniform act cannot be accomplished.

The act is known as the "'uniform law to secure the attendance of witnesses from within or without a state in criminal proceedings,'" Sec. 942.06, Florida Statutes 1955, and F.S.A., and is "only applicable to such state as shall enact reciprocal powers to this state relative to the matter of securing attendance of witnesses" as provided in it. Sec. 942.05, Florida Statutes 1955. It was enacted in New York, Code of Criminal Procedure 618-a, supra.

We return now to the procedure outlined. If it is recommended in the certificate that the witness be taken into immediate custody and delivered to an officer of the state making the request, the judge may, instead of notification of the hearing, order the witness brought before him at once. Such a recommendation was made in this case and [fol. 146] such an order was initially entered. It is provided in the act that if at the hearing the custody and delivery appear to the resident judge "desirable", he may order the witness placed in custody and delivered to an officer of the state making the request.

Evidently The People of the State of New York intended by the certificate of the judge to coerce the attendance of O'Neill by one process or the other but preferred to have the witness taken into custody. When the circuit judge in Dade County entertained the certificate, two courses were available. He could have notified the prospective witness of a hearing to determine whether or not the witness should be subpoenaed to testify before the grand jury in

New York. On the other hand, in view of the recommendation that the witness be taken into custody, the judge could have directed that the witness be immediately brought before him and then, if the judge was "satisfied of the desirability" that the witness should be placed in custody and delivered to an officer of the State of New York, he could have followed that procedure instead of issuing a subpoena.

The latter course seems to have been first chosen by the circuit judge, but upon hearing he decided not to put O'Neill in custody or place him under summons because of his conviction that the whole act was invalid.

In the circumstances it seems to be our obligation to decide the constitutionality of Sec. 942.02, supra, whether the procedure be to seize and deliver a witness or to place him under subpoena. We will discuss the two aspects in that order.

Certain salient facts should be remembered in judging the merits of the act as it would operate on O'Neill. He is not charged with crime. On the contrary, it is stated in the judge's certificate that the laws of New York would guarantee O'Neill, if taken there pursuant to this proceeding, protection from arrest and the service of criminal process. Parenthetically, this assurance was given in the certificate but it is extremely doubtful if the act itself provides for [fol. 147] such a safeguard, except in the case where a summons is issued as distinguished from seizure and delivery of the witness.

Although the uniform law was adopted by The National Conference of Commissioners on Uniform State Laws more than a quarter century ago and, incidentally, enacted by this State in 1941, there is a dearth of judicial decision on its operation and validity.

It appears from the opinion of the circuit judge and the brief filed by the appellee that but one court has passed directly upon the provisions of the act attempting to authorize the summary procedure, namely, a District and County Court of Pennsylvania in In Re Allen, 49 Pa. D & C 631. The court seems to have primarily considered the title of the act under attack, but it did declare the provisions for seizure of a witness and his delivery to the

officer of a foreign state invalid because they violated Sec. 2 of Art. IV and the privileges and immunities provision of the Fourteenth Amendment of the Federal Constitution. The Constitutionality of the uniform act was considered in In Re Cooper, 127 N.J.L. 312, 22 A.2d 532, and in In Re Saperstein, 30 N.J. Super. 373, 104 A.2d 842, but in neither of these was the validity of the particular provisions for seizure and delivery of a witness specifically determined. In the former it was contended that the title of the act was not sufficient to make a witness for a defendant subject to its provisions with reference to the issuance of subpoenas. It is true that the provisions for seizure of a witness were assailed but clearly no attempt to invoke them had been made. In the latter decision the points presented were not the same as those we are considering.

By the Fourteenth Amendment of the Constitution of the United States the states are enjoined from making or enforcing "any law which shall abridge the privileges or immunities of citizens of the United States * * *." It also contains the guarantee that a state shall not deprive a person of liberty "without due process of law." And in the first paragraph of Sec. 2 of Art. IV of the Constitution [fol. 148] is incorporated the guarantee that also seems immediately involved in the question whether or not a person who is not charged with crime of any sort may be restrained of his freedom because he is needed elsewhere as a witness in an investigation by a grand jury. Not only are the privileges and immunities of citizens of the United States placed beyond the power of the state to impair but citizens of each state are vouchsafed the privileges and immunities of the citizens of all the states. The following paragraph of Sec. 2 of Art. IV gives emphasis to the preceding one and forms an exception to it for such privileges and immunities are not guaranteed to the person charged with "Treason, Felony, or other Crime" who flees from justice. The state to which he flees must deliver him up "on Demand of the executive Authority of the State from which he fled * * *."

We agree with the circuit judge that the right of O'Neill to ingress and egress would be impaired if not destroyed if the circuit judge were to order his seizure, as was

"recommended". He would no longer have been allowed freely to pass from the State of Florida to another state but would have been taken to New York whether or not he wished to go there and he would have been prevented from returning to his home state of Illinois although it is quite clear that he came to this state for a visit of but a few days to attend a convention.

We think the provisions of the Fourteenth Amendment forbad the passage by the legislature of Florida of a law which would so interfere with the movement of a citizen of the United States who as a citizen of Illinois was privileged to move freely from his state to Florida and back. This privilege would have been nullified, of course, had he become a fugitive from justice which is not the case.

In Twining v. New Jersey, 211 U.S. 78, 29 S.Ct. 14, 53 L. Ed. 97, it was written: "Privileges and immunities of citizens of the United States, on the other hand, are only [fol. 149] such as arise out of the nature and essential character of the national government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States. Slaughter-House Cases, supra, p. 79; Re Kemmler, 136 U.S. 436, 448, 34 L.ed. 519, 524, 10 Sup. Ct. Rep. 930; Duncan v. Missouri, 152 U. S. 377, 382, 38 L.ed. 485, 487, 14 Supt. Ct. Rep. 570. Thus, among the rights and privileges of national citizenship recognized by this court are the right to pass freely from state to state (Crandall v. Nevada, 6 Wall. 35, 18 L.ed. 745); * * *."

We think that operation of the statute in question would constitute a definite interference with the right of a citizen of the state and of the United States to move freely from one state to another, and we think of no better illustration than what would have occurred in this case had the circuit judge accepted the "recommendation" and found it "desirable" to send O'Neill to New York in custody. A Citizen of Illinois, comes to Florida for a brief visit; he is haled into court and confronted with an order placing him in custody of an officer who will conduct him to New York. His privilege of staying, or returning to his home in Illinois, or of going elsewhere, is brought to an end. It is difficult to imagine a harsher infringement of the right

a citizen has to go from place to place which is a privilege, according to the expressions of the Supreme Court of the United States, secured to him under the Fourteenth Amendment.

O'Neill is entitled under Sec. 2 of Art. IV, supra, to all the privileges and immunities of all the citizens of all the other states so long as he has not committed crime for which he could be extradited. The power to remove him in this isolated situation is found in that section. The courts have held that this kind of extradition depends on the Constitution of the United States, People v. Hiatt, 172 N.Y. 176, 64 N.E. 825, and not on comity, courtesy or contract. Ex parte Thompson, 85 N.J. Eq. 221, 96 A. 102.

[fol. 150] We think the matter is purely one of conflict with the Federal Constitution; that the act violates the constitution, and consequently cannot be upheld.

Inasmuch as the circuit judge apparently could have put the witness under subpoena if he concluded against the "desirability" of placing him in custody and could have bound the witness to appear, or be held in contempt, and since the judge held the whole act unconstitutional and discharged O'Neill, we decide, too, the question of the validity of the law as it would be applied in the other instance.

It was the view of the circuit judge that the courts of this state were without power to issue process effective beyond the borders of the state. This general rule we understand is true. Passett v. Chase, 91 Fla. 552, 107 So. 689. Nor can civil process operate beyond the limits of the state so as to form a basis for a money judgment against one residing without although he has been made a party to the litigation by constructive service. Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565.

Because we believe, after careful study, that this feature of the law is unconstitutional, for the reasons we have given, we find no occasion to discuss the question whether or not it violates Secs. 9 and 12 of the Declaration of Rights of the Constitution of Florida and the Eighth and Fourteenth Amendments of the Constitution of the United States because no bail is provided for persons attached and delivered into custody of an officer of another state.

We ask the rhetorical question: How, then can a Florida court enforce an order to appear before a court of another state when the operation of the order clearly extends beyond state limits? While any person is within the boundaries of this state he is subject to orders entered against him by courts properly exercising their jurisdiction, but it would be inconsistent with the decisions cited to hold that such a court could command a witness to appear in New York, send him on his way, then, if the witness did not appear in New York, punish him here for his failure there [fol. 151] "in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state." It is not clear just what court would administer the punishment in the event of default because that part of the act provides that "he shall be punished" in the manner described. Conceivably his failure would be contemptuous of both courts. If the Florida court attempted to inflict punishment, it would be for failure to comply in New York; if the New York court undertook to inflict punishment, it would be for failure to obey a summons set in motion in Florida. Either way the Florida process would be operating extra-territorially.

The Attorney General concedes in his brief that the Supreme Court of the United States has held that among the privileges of American citizenship guaranteed by the Fourteenth Amendment is the right to pass freely from state to state, citing Twining v. New Jersey, supra. He takes the position that Sec. 2 of Art. IV has no application to the facts of this case because, as we understand it, the statute, Sec. 942.02, does not discriminate between the citizens of Florida and the citizens of any other state. This would mean that O'Neill, a sojourner from Illinois, could be summarily put in custody or placed under subpoena, because any citizen of Florida could be treated the same way. To extend this argument the law would be valid because in those states that have adopted it any person could be placed in custody or put under subpoena, to coerce his appearance as a witness in any other state that had adopted the law.

This might be an answer to a charge of discrimination but it does not follow that if a law is invalid for some reason it should nevertheless be held good because, bad as it is, it effects (sic) all persons the same.

As we interpret the Fourteenth Amendment, the citizens of Florida and New York which have adopted the uniform law, may, as citizens of the United States, go where they please, and so may the citizens of Illinois and other states [fol. 152] that have not enacted it. If, aside from the question now of discrimination, a citizen of a state having no such law, Illinois, travels to a state having it, Florida, and there is made subject to the law because another state, New York, thinks his presence there is "desirable", it cannot be true that the right of all the citizens of all the states to move among them has not been impaired.

The Attorney General quotes liberally from the opinion in Commonwealth of Massachusetts v. Klaus, 130 N.Y.S. 713, decided by the Appellate Division of the Supreme Court of New York, and italicizes a statement in the opinion of that court that it was conceded in the brief "that the right of free ingress and egress was never intended to enable a citizen of the United States to interfere with the orderly administration of justice within the territorial boundaries of the state" and that a citizen when "within the boundaries of a state" is amenable to the constitution and laws of that state and that the privileges and immunities clause affords him only protection against unjust discrimination. This concession, said the court, was a complete answer to the charge that a law, similar to the one before us, was unconstitutional. So this decision helps us little.

We are not able so easily to decide the matter before us for we do not think that Sec. 2 of Art. IV read with the pertinent part of the Fourteenth Amendment justifies the view that no rights are abridged if no discrimination is practiced.

The Attorney General argues that "[n]o power was delegated * * * to the United States to require free ingress and egress when to do so would defeat one of the primary purposes for which the state governments were instituted, viz., the protection of the people from *criminals*." (Italics

ours.) Nor does the Constitution prohibit the states from impairing the right of free ingress and egress to the extent required to protect themselves against *criminals*.

We do not find in the provisions of the law a basis for the position. The act refers to prosecutions and grand jury [fol. 153] investigations but we have ascertained nothing in it with reference to restricting such testimony to use by the state in either. The procedure is inaugurated by a certificate of a judge of record of the requesting state that the person sought to be extradited "is a material witness *in* such prosecution, or * * * investigation." We have supplied the italics. Furthermore, the preceding section, Sec. 942.01, Florida Statutes 1955, titled "Definitions" contains the following: "'Witness'—as used in this chapter [942], shall include a person whose testimony is desired *in* any proceeding or investigation by a grand jury or *in* a criminal action, prosecution or proceeding held by the prosecution *or the defense.*" (Italics ours.) So, evidently the procedure would be available to a defendant as well as the prosecution.

We realize that the right of ingress and egress is not absolute, for instance, the Fourteenth Amendment does not limit exercise by the state of the police power to protect the health, morals and general welfare of the people. Butchers' Union S.H. and L.S.L. Co. v. Crescent City L.S.L. and S. H. Co., 11 U.S. 746, 28 L. Ed. 585, 4 S. Ct. 652. But we do not discern in the present state of facts any of the elements of an exception.

The Attorney General concedes that circumstances might exist under which bodily delivery of a witness would be unreasonable and that "it was never intended to authorize the delivery of a witness * * * where the circumstances are such that it would be unreasonable to do so * * *." This statement is followed by the remark: "when the statute is thusly construed there is nothing unreasonable about it." In this connection we refer, again, to the procedure. If the judge of the demanding state certifies the "desirability" of bodily delivery, it shall be prima facie evidence of the "desirability" and the judge here may, if satisfied with the "desirability", have the witness taken into custody. We cannot decide the constitutionality or unconstitutionality of the act under attack by simply saying

that if the circumstances are reasonable there is nothing unreasonable about the act.

[fol. 154] After a careful study of both features of the law, we are convinced that it is unconstitutional and that the circuit judge ruled correctly when he held it so.

Affirmed.

Terrell, C.J., Hobson, Thornal and O'Connell, JJ., concur.

[fol. 155]

IN THE SUPREME COURT OF FLORIDA

In Re: The Application of the People of the State of New York for an Order Requiring

JOSEPH C. O'NEILL

to Attend and Testify Before the Grand Jury of the County of New York, State of New York.

JUDGMENT—January 22, 1958

This cause having heretofore been submitted to the Court upon the transcript of the order herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said order; it is, therefore, considered, ordered and decreed by the Court that the said order of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant his costs by him in this behalf expended, except the $12.00 filing fee which has been paid by the Appellant, and that all costs shall be taxed in the Court in which the appeal was entered, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Thomas was this day ordered to be filed.

[fol. 157]

IN THE SUPREME COURT OF THE STATE OF FLORIDA

[Title omitted]

APPELLANT'S PETITION FOR REHEARING—
Filed February 4, 1958

Comes now the appellant and petitions the Court for a rehearing in this cause upon the following grounds:

1. The Court overlooked and failed to consider that its decision is in direct conflict with the tenor and spirit of the United States Supreme Court's holding in *Kentucky* v. *Dennison,* 24 How. 66, to the effect that in the absence of any enabling federal constitutional provision, the states may mutually support each other in bringing offenders to justice and thus provide for the internal safety of each of them through the exercise of comity. Without witnesses, offenders cannot be brought to justice. Without witnesses, the internal safety of the states cannot be secured.

2. The Court overlooked and failed to consider that its [fol. 158] decision is in conflict with the tenor and spirit of the holding of the United States Supreme Court in *Innes* v. *Tobin,* 240 U. S. 127, and with the tenor and spirit of the holdings of this Court in *Ennist* v. *Baden,* 158 Fla. 141, 28 So. 2d 160, and *State* v. *Bennett,* 90 So. 2d 43, all holding that, without the benefit of any enabling federal constitutional provision, a state may, in the exercise of its reserved powers, constitutionally enact legislation authorizing the surrender to another state of a person charged with crime in the latter state who is not subject to extradition under federal law. Having defendants available for trial is of no avail if a state cannot procure witnesses against them. A state has just as much reserved power to surrender witnesses as it has to surrender defendants, the surrender in each case being made through comity for the purpose of assisting another state to bring offenders to justice and to preserve its internal security.

3. The Court overlooked and failed to consider that its decision denies a state's power to procure attendance of a

witness through the comity and cooperation of a sister state despite the fact that the exercise of that power would entail no greater interference with his basic freedom of movement as a citizen than if the interference occurred within the bounds of the state where the witness is desired.

4. The Court overlooked and failed to consider that its decision magnifies the individual freedom of a witness to [fol. 159] move without restraint across state lines to the complete exclusion of his duty to aid in law enforcement as a material witness in any state and to the exclusion of the greater right and duty of a state to enforce its laws for the protection of its people.

5. The Court overlooked and failed to consider that its decision effectively opens the door for material witnesses in Florida to cross over the state line and thumb their noses at the Florida courts, no matter how serious the crime which they witnessed and no matter how indispensable their testimony may be.

6. The Court overlooked and failed to consider that its decision raises the right of a witness to a crime in another state to asylum in Florida above and beyond his duty as a citizen to respond to process and give material evidence often vitally essential to quell the lawless for the protection of society.

7. The Court overlooked and failed to consider that its decision will in many cases have the effect of rendering courts of other states helpless in their investigation of crime by assuring sanctuary for fleeing witnesses; and that its decision will render Florida wholly unable to procure witnesses from other states because of its lack of power to reciprocate.

8. The Court overlooked and failed to consider that its decision denies law enforcement a long used and honored [fol. 160] method of enforcing the appearance of fugitive witnesses in this day of nation-wide syndicated rackets, lotteries, narcotic rings, etc., and has the effect of permitting such witnesses to use modern fast transportation to flee from states where their testimony is material. It leaves the way wide open for the lawless to materially help

their cause and to delay and possibly defeat criminal investigations by inducing material witnesses to leave the state.

9. The Court overlooked and failed to consider that its decision interposes a barrier, coincident with state lines, to the employment of vitally necessary reciprocity and comity between states throughout the nation, which reciprocity and comity is nevertheless requisite for the procurement of material evidence essential to the proper functioning of trial courts which, in turn, is essential to the internal security of the people of each state.

10. The Court overlooked and failed to consider that its decision gives an absolutism to the right of a citizen to pass freely into another state which transcends his duty to the society of his state to appear as a material witness.

11. The Court overlooked and failed to consider that its decision makes paramount the right to cross a state line to the exclusion of the needs of both state courts and society in general.

12. The Court overlooked and failed to consider that not [fol. 161] even the great freedoms of the constitution, such as freedom of speech, press, worship and assembly, are beyond interference for the public good; and that when a citizen's freedom to go to another state is interfered with in order to serve a public need for him to appear as a witness, the interference is slight indeed, is not unreasonable, and is for a very essential public purpose.

13. The Court overlooked and failed to consider that, as held by the United States Supreme Court in *Pennoyer* v. *Neff*, 95 U. S. 714, every state, and hence the State of Florida, possesses exclusive jurisdiction and sovereignty over persons and property within its territory; that Section 942.02 operates solely upon persons found within the State of Florida; that said statute makes no provision for the service of Florida process in another state; and that the summons authorized by said statute is to be served within the State of Florida and does not run into another state.

Wherefore, the appellant petitions the Court to grant a rehearing in this cause.

[fol. 162] Respectfully submitted,

Richard W. Ervin, Attorney General, Reeves Bowen, Assistant Attorney General, Frank S. Hogan, District Attorney, New York County, 155 Leonard Street, New York 13, New York, by /s/ Reeves Bowen, Assistant Attorney General, Counsel for Appellant.

[fol. 163] Certificate of Service (omitted in printing).

[fol. 164]

IN THE SUPREME COURT OF FLORIDA

In Re: The Application of the People of the State of New York for an Order Requiring One

JOSEPH C. O'NEILL

to Attend and Testify Before the Grand Jury of the County of New York, State of New York.

ORDER DENYING PETITION FOR REHEARING—
February 24, 1958

On consideration of the Petition for Rehearing filed by Counsel for Appellant,

It Is Ordered by the Court that the said petition be, and the same is hereby, denied.

[fol. 165]

IN THE SUPREME COURT OF FLORIDA

In Re: The Application of the People of the State of New York for an Order Requiring One

JOSEPH C. O'NEILL

to Attend and Testify Before the Grand Jury of the County of New York, State of New York.

JUDGE'S CERTIFICATE AS TO OPINION—March 25, 1958

We, the undersigned Justices of the Supreme Court of Florida, being all of the Justices who participated in the decision of the above styled case, hereby certify as follows:

In the concluding paragraph of our opinion in this case, we held as follows:

"After a careful study of both features of the law, we are convinced that it is unconstitutional * * * *"

The law referred to in said quoted portion of our opinion was Section 942.02, Florida Statutes 1955.

The two features of said law referred to in said quoted matter were (1) the feature of said law which authorizes taking a witness into custody and delivering him to an officer of the requesting state; and (2) the feature of said law which authorizes the issuance of a summons requiring the attendance of a witness in the requesting state.

[fol. 166] Our holding in said quoted part of our opinion that said law is unconstitutional as to both of said features had reference to the privileges and immunities clause of Section Two of Article Four of the United States Constitution and to the privileges and immunities clause of the Fourteenth Amendment to said Constitution, and our intention in making said holding was that, as to each of said features of said law, said law is unconstitutional because it conflicts with both of said privileges and immunities clauses of the United States Constitution.

This the 25th day of March, 1958.

Glenn Terrell, Chief Justice, Elwyn Thomas, Justice, T. Frank Hobson, Justice, Campbell Thornal, Justice, Stephen O'Connell, Justice.

[fol. 167]

IN THE SUPREME COURT OF FLORIDA

[Title omitted]

ORDER RE RECORD—April 8, 1958

The Attorney General has filed a motion for an order directing that the following papers in this cause be made a part of the record in order to place the whole case before the United States Supreme Court to-wit:

1. The appellant's petition for rehearing.

2. This Court's order denying the appellant's petition for rehearing.

3. The certificate as to the federal questions referred to in this Court's opinion and decided thereby, which certificate was dated March 25, 1958 and was signed by all of the justices of this Court who participated in the decision of this cause.

Upon consideration thereof, it is ordered that the said motion be and the same is hereby granted.

[fol. 168] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 169]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed June 2, 1958

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.